

1 DEPARTMENT OF REAL ESTATE  
2 P. O. Box 187007  
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

**FILED**

MAY 23 2012

DEPARTMENT OF REAL ESTATE  
By K. Mat

5  
6  
7  
8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 ) NO. H-11185 SF  
13 RCI FINANCIAL CORPORATION and )  
14 VLADISLAV CHERNOGUZ, ) STIPULATION AND AGREEMENT  
15 Respondents. )

16  
17 It is hereby stipulated by and between Respondents RCI FINANCIAL  
18 CORPORATION, ("RCI") and VLADISLAV CHERNOGUZ ("CHERNOGUZ"), (collectively  
19 "Respondents"), acting by and through Joshua A. Rosenthal, Esq., Counsel for Respondents, and  
20 the Complainant, acting by and through Annette E. Ferrante, Esq., Counsel for the Department  
21 of Real Estate ("Department"), as follows for the purpose of settling and disposing of the  
22 Accusation filed on August 9, 2011, in this matter:

23 1. All issues which were to be contested and all evidence which was to be  
24 presented by Complainant and Respondents at a formal hearing on the Accusation, which  
25 hearing was to be held in accordance with the provisions of the Administrative Procedure Act  
26 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions  
27 of this Stipulation and Agreement.

1                   2.       Respondents have received, read and understand the Statement to  
2 Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department  
3 of Real Estate in this proceeding.

4                   3.       Respondents filed a Notice of Defense pursuant to Section 11505 of the  
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.  
6 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents  
7 acknowledge that Respondents understand that by withdrawing said Notice of Defense,  
8 Respondents will thereby waive Respondents' right to require the Real Estate Commissioner  
9 ("Commissioner") to prove the allegations in the Accusation at a contested hearing held in  
10 accordance with the provisions of the APA and that Respondents will waive other rights  
11 afforded to Respondents in connection with the hearing such as the right to present evidence in  
12 defense of the allegations in the Accusation and the right to cross-examine witnesses.

13                  4.       Respondents, pursuant to the limitations set forth below, hereby admit that  
14 the factual allegations in the Accusation filed in this proceeding are true and correct and the  
15 Commissioner shall not be required to provide further evidence to prove such allegations.

16                  5.       It is understood by the parties that the Commissioner may adopt the  
17 Stipulation and Agreement as his decision in this matter, thereby imposing the penalty and  
18 sanctions on Respondents' real estate licenses and license rights as set forth in the "Order"  
19 below. In the event that the Commissioner in his discretion does not adopt the Stipulation and  
20 Agreement, it shall be void and of no effect, and Respondents shall retain the right to a hearing  
21 and proceeding on the Accusation under all of the provisions of the APA and shall not be bound  
22 by any admission or waiver made herein.

23                  6.       The Order or any subsequent Order of the Commissioner made pursuant  
24 to this Stipulation and Agreement shall not constitute an estoppel, merger or bar to any further  
25 administrative or civil proceedings by the Department with respect to any matters which were  
26 not specifically alleged to be causes for accusation in this proceeding.

27 ///

7. Respondents understand that by agreeing to this Stipulation and Agreement, Respondents agree to pay, pursuant to Section 10148 of the California Business and Professions Code ("the Code"), the cost of the audit which resulted in the determination that Respondents committed the trust fund violation(s) found in the Determination of Issues. The amount of such costs is \$2,831.00.

8. Respondents further understand that by agreeing to this Stipulation and Agreement, the findings set forth below in the Determination of Issues become final, and that the Commissioner may charge said Respondents for the costs of any audit conducted pursuant to Section 10148 of the Code to determine if the violations have been corrected. The maximum cost of said audit shall not exceed \$2,831.00.

## DETERMINATION OF ISSUES

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the following determination of issues shall be made:

I.

The acts and omissions of Respondent RCI as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent RCI under the provisions of Sections 10145, 10085, 10085.5, 10146, 10177(d), and 10177(g) of the Code, and Sections 2832.1, 2831, 2831.2, 2970, and 2972 of Title 10 of the California Code of Regulations (“the Regulations”).

## II.

The acts and omissions of Respondent CHERNOGUZ as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent CHERNOGUZ under the provisions of Sections 10159.2, 10177(d), 10177(g) and 10177(h) of the Code, and Section 2725 of Title 10 of the Regulations.

///

///

1 ORDER

2 I.

3 All licenses and licensing rights of Respondent RCI under the Real Estate Law  
4 are suspended for a period of one-hundred twenty (120) days from the effective date of this  
5 Order; provided, however, that:

6 1. One-hundred twenty (120) days of said suspension shall be stayed for  
7 two (2) years upon the following terms and conditions:

8 a. Respondent RCI shall obey all laws, rules and regulations  
9 governing the rights, duties and responsibilities of a real estate licensee in the State of  
10 California; and

11 b. That no final subsequent determination be made, after hearing or  
12 upon stipulation, that cause for disciplinary action occurred within two (2) years from the  
13 effective date of this Order. Should such a determination be made, the Commissioner may, in  
14 her discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed  
15 suspension. Should no such determination be made, the stay imposed herein shall become  
16 permanent.

17 II.

18 All licenses and licensing rights of Respondent CHERNOGUZ under the Real  
19 Estate Law are suspended for a period of one-hundred twenty (120) days from the effective  
20 date of this Order; provided, however, that:

21 1. Ninety (90) days of said suspension shall be stayed for two (2) years  
22 upon the following terms and conditions:

23 a. Within two (2) years from the effective date of this Order,  
24 Respondent CHERNOGUZ shall provide proof satisfactory to the Commissioner, of having  
25 made payment to Odontuya D. Shourd in the amount of \$1,000.00, or as otherwise mutually

26 ///

27 ///

1 agreed between Respondent CHERNOGUZ and Odontuya D. Shourd. However, if two (2)  
2 years from the effective date of this Order have elapsed and Respondent CHERNOGUZ cannot  
3 locate Odontuya D. Shourd to present payment, then compliance with this restitution provision  
4 shall be satisfied if, (i) Respondent CHERNOGUZ submits a written statement made under  
5 penalty of perjury to the Commissioner that states the following: "I, VLADISLAV  
6 CHERNOGUZ, have been unable to locate Odontuya D. Shourd, and I have not been contacted  
7 by Odontuya D. Shourd", and (ii) if Respondent submits payment to the Department in the  
8 amount of \$1,000.00 in the form of a cashier's check or certified check made payable to the  
9 Consumer Recovery Account of the Real Estate Fund as a monetary penalty pursuant to  
10 Section 10175.2 of the Code. Said written statement and payment must be delivered to the  
11 Department within thirty (30) days after two (2) years from the effective date of the Decision  
12 in this matter;

13                                   b. Within two (2) years from the effective date of this Order,  
14 Respondent CHERNOGUZ shall provide proof satisfactory to the Commissioner, of having  
15 made payment to Luis O. Herrera in the amount of \$3,500.00, or as otherwise mutually agreed  
16 between Respondent CHERNOGUZ and Luis O. Herrera. However, if two (2) years from the  
17 effective date of this Order have elapsed and Respondent CHERNOGUZ cannot locate Luis O.  
18 Herrera to present payment, then compliance with this restitution provision shall be satisfied if,  
19 (i) Respondent CHERNOGUZ submits a written statement made under penalty of perjury to  
20 the Commissioner that states the following: "I, VLADISLAV CHERNOGUZ, have been  
21 unable to locate Luis O. Herrera, and I have not been contacted by Luis O. Herrera", and (ii) if  
22 Respondent submits payment to the Department in the amount of \$3,500.00 in the form of a  
23 cashier's check or certified check made payable to the Consumer Recovery Account of the Real  
24 Estate Fund as a monetary penalty pursuant to Section 10175.2 of the Code. Said written  
25 statement and payment must be delivered to the Department within thirty (30) days after two  
26 (2) years from the effective date of the Decision in this matter;

27 ///

1                   c.       Respondent CHERNOGUZ shall obey all laws, rules and  
2 regulations governing the rights, duties and responsibilities of a real estate licensee in the State  
3 of California; and

4                   d.       That no final subsequent determination be made, after hearing or  
5 upon stipulation, that cause for disciplinary action occurred within two (2) years from the  
6 effective date of this Order. Should such a determination be made, the Commissioner may, in  
7 his discretion, vacate and set aside the stay order and re-impose all or a portion of the stayed  
8 suspension. Should no such determination be made, the stay imposed herein shall become  
9 permanent.

10                  e.       If the Commissioner determines that Respondent CHERNOGUZ  
11 has failed to comply with these conditions, the Commissioner may, in his discretion, vacate  
12 and set aside the stay order and re-impose all or a portion of the stayed suspension. Should no  
13 such determination be made, the stay imposed herein shall become permanent.

14                  f.       If Respondent CHERNOGUZ complies with these conditions,  
15 and if no further cause for disciplinary action against the real estate license of Respondent  
16 CHERNOGUZ occurs within two (2) years from the effective date of the Decision herein, then  
17 the stay hereby granted shall become permanent.

18                  2.       Thirty (30) days of said suspension shall be stayed, upon the condition  
19 that Respondent CHERNOGUZ petitions pursuant to Section 10175.2 of the Business and  
20 Professions Code and pays a monetary penalty pursuant to Section 10175.2 of the Business and  
21 Professions Code at a rate of \$100 for each day of the suspension for a total monetary penalty of  
22 \$3,000.

23                  a.       Said payment shall be in the form of a cashier's check or certified  
24 check made payable to the Consumer Recovery Account of the Real Estate Fund. Said check  
25 must be delivered to the Department prior to the effective date of the Decision in this matter.

26 ///

27 ///

1                    b.     No further cause for disciplinary action against the real estate  
2 license of Respondent CHERNOGUZ occurs within two (2) years from the effective date of the  
3 decision in this matter.

4                    c.     If Respondent CHERNOGUZ fails to pay the monetary penalty in  
5 accordance with the terms and conditions of the Decision, the Commissioner may, without a  
6 hearing, order the immediate execution of all or any part of the stayed suspension, in which  
7 event, Respondent CHERNOGUZ shall not be entitled to any repayment nor credit, prorated or  
8 otherwise, for money paid to the Department under the terms of this decision.

9                    d.     If Respondent CHERNOGUZ pays the monetary penalty, and if  
10 no further cause for disciplinary action against the real estate license of Respondent  
11 CHERNOGUZ occurs within two (2) years from the effective date of the Decision herein, then  
12 the stay hereby granted shall become permanent.

13                    3.     All licenses and licensing rights of Respondent CHERNOGUZ are  
14 indefinitely suspended unless or until Respondent CHERNOGUZ provides proof satisfactory to  
15 the Commissioner, of having made payment to Ilya and Tatyana Yuriychuk in the amount of  
16 \$3,500.00, or as otherwise mutually agreed between Respondent CHERNOGUZ and Ilya and  
17 Tatyana Yuriychuk.

18                    4.     All licenses and licensing rights of Respondent CHERNOGUZ are  
19 indefinitely suspended unless or until Respondent CHERNOGUZ provides proof satisfactory to  
20 the Commissioner, of having made payment to Sergei and Luomila Volkov in the amount of  
21 \$1,000.00, or as otherwise mutually agreed between Respondent CHERNOGUZ and Sergei and  
22 Luomila Volkov.

23                    5.     Respondent CHERNOGUZ shall, within six (6) months from the  
24 effective date of this Order, take and pass the Professional Responsibility Examination  
25 administered by the Department, including the payment of the appropriate examination fee. If

26 ///

27 ///

1 Respondent CHERNOGUZ fails to satisfy this condition, the Commissioner may order the  
2 suspension of all licenses and licensing rights of Respondent CHERNOGUZ until Respondent  
3 CHERNOGUZ passes the examination.

4 6. Notwithstanding any other provision of this Order, all licenses and  
5 licensing rights of Respondent CHERNOGUZ are suspended unless and until he provides  
6 proof satisfactory to the Commissioner that he has taken and successfully completed the  
7 continuing education course on Trust Fund Accounting and Handling specified in Section  
8 10170.5(a)(3) of the Code. The course must have been completed no earlier than one hundred  
9 twenty (120) days prior to the effective date of this Order, and proof must be submitted prior to  
10 the effective date of this Order, to prevent suspension of Respondent CHERNOGUZ's license  
11 pursuant to this condition.

12 7. Respondent CHERNOGUZ shall pay the sum of \$2,831.00 for the  
13 Commissioner's cost of the audit which led to this disciplinary action. Respondent  
14 CHERNOGUZ shall pay such cost within sixty (60) days of receiving an invoice therefore  
15 from the Commissioner. The Commissioner may indefinitely suspend all licenses and  
16 licensing rights of Respondent CHERNOGUZ pending a hearing held in accordance with  
17 Section 11500, et seq., of the Government Code, if payment is not timely made as provided for  
18 herein, or as provided for in a subsequent agreement between Respondent CHERNOGUZ and  
19 the Commissioner. The suspension shall remain in effect until payment is made in full or until  
20 Respondent CHERNOGUZ enters into an agreement satisfactory to the Commissioner to  
21 provide for payment, or until a decision providing otherwise is adopted following a hearing  
22 held pursuant to this condition.

23 8. Respondent CHERNOGUZ shall pay the Commissioner's costs, not to  
24 exceed \$2,831.00, of any audit conducted pursuant to Section 10148 of the Code to determine  
25 if Respondent CHERNOGUZ has corrected the violations described in the Determination of  
26 Issues, above, and any other violations found in the audit which led to this disciplinary action.

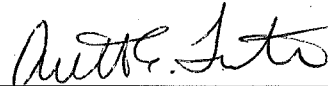
27 ///



1 In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use  
2 the estimated average hourly salary for all persons performing audits of real estate brokers, and  
3 shall include an allocation for travel time to and from the auditor's place of work. Respondent  
4 CHERNOGUZ shall pay such cost within sixty (60) days of receiving an invoice therefore  
5 from the Commissioner detailing the activities performed during the audit and the amount of  
6 time spent performing those activities. If Respondent CHERNOGUZ fails to pay such cost  
7 within the sixty (60) days, the Commissioner may indefinitely suspend all licenses and  
8 licensing rights of Respondent CHERNOGUZ under the Real Estate Law until payment is  
9 made in full or until Respondent CHERNOGUZ enters into an agreement satisfactory to the  
10 Commissioner to provide for payment. Upon full payment, the indefinite suspension provided  
11 for in this paragraph shall be stayed.

12  
13 02-27-12

14 DATED



15 ANNETTE E. FERRANTE, Counsel  
16 Department of Real Estate  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

\*\*\*


I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government Code), and I willingly, intelligently, and voluntarily waive those rights, including the right of requiring the Commissioner to prove the allegations in the Accusation at a hearing at which I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges. Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by Respondents, to the Department at fax number (916) 227-9458. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of Respondents' actual signatures as they appear on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.


2/27/12

DATED

2/27/12

DATED

  
VLADISLAV CHERNOGUZ,  
Respondent

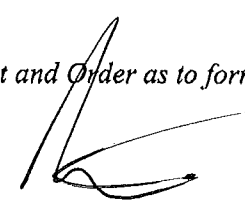
  
VLADISLAV CHERNOGUZ,  
As Designated Officer of Respondent  
RCI FINANCIAL CORPORATION

\*\*\*

*I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my clients accordingly.*

3/23/12

DATED

  
JOSHUA A. ROSENTHAL,  
Attorney for Respondents  
RCI FINANCIAL CORPORATION and  
VLADISLAV CHERNOGUZ

